

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
Meeting Minutes
July 23, 2010

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Sidney Buckman
Daniel Cartagena
William Fabricius - *telephonic*
Jack Gibson
Grace Hawkins
Honorable Jeanne Hicks - *telephonic*

David Horowitz
Jeffery G. Hynes - *telephonic*
Patty O'Berry
Ellen Seaborne
Russell Smoldon
David Weinstock
Honorable Thomas Wing
Steve Wolfson

MEMBERS ABSENT

Honorable Edward Ableser
Honorable Andy Biggs
Laura Sabin Cabanillas
Honorable Steve Court
Honorable Sharon Douglas
Todd Franks

Danette Hendry
Honorable Leah Landrum Taylor
Ella Maley
Honorable Rebecca Rios
George Salaz
Donnalee Sarda

GUESTS:

Katy Proctor
Terry Decker
Karen Duckworth
Timothy Frank
Brooks Gibson

Ana Jabkowski
Kendra Leiby
Brent Miller
Debra Brimhall Pearson
Kevin Wassen

STAFF:

Kathy Sekardi
Tama Reily
Holly Ambuehl - *telephonic*
Ingrid Garvey
Barbara Guenther
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
Arizona House of Representative
Arizona House of Representatives
Arizona State Senate
Arizona State Senate

CALL TO ORDER

Without a quorum present, the July 23, 2010, meeting of the Domestic Relations Committee (DRC) was called to order at 10:03 a.m. by Senator Linda Gray, Co-Chair.

Introductions were made around the room.

ANNOUNCEMENTS

Senator Gray welcomed new member Honorable Jeanne Hicks, recently appointed to the DRC by Chief Justice Rebecca White Berch. Ms. Hicks is the Clerk of the Superior Court in Yavapai County.

THE LEGISLATIVE PROCESS (*Item taken out of order*)

Amber O'Dell, Research Analyst to the Senate Public Safety and Human Services Committee, and Ingrid Garvey, Research Analyst to the House Health & Human Services Committee discussed their roles as legislative research analysts. Ms. O'Dell explained that they produce research based written summaries of bills, looking at the history of the current law and how the bill would change or create law. They also summarize the bill in committee hearings, but are limited to imparting facts and prohibited from lobbying. Research Analysts can also facilitate the drafting of bills with the stipulation that it has a sponsor.

Ms. O'Dell provided an overview of the legislative process, beginning with the drafting of a bill, through the committee hearings, public and expert testimony, to the forwarding of the bill to the caucus in both chambers.

Ms. Garvey reviewed the process of the bill going to the committee of the whole (COW) in both parties, amendment procedures, the vote in each chamber, to the sending of the bill to the governor. A printed version of the PowerPoint presentation was provided in today's meeting materials.

APPROVAL OF MINUTES

With a quorum now present, the DRC minutes for the October 23, 2009, and March 5, 2010, meetings were presented for approval.

MOTION: To approve the meeting minutes of the October 23, 2009, meeting of the DRC.
SECOND: Motion seconded.
VOTE: Approved Unanimously.

MOTION: To approve the meeting minutes of the March 5, 2010 meeting of the DRC.
SECOND: Motion seconded.
VOTE: Approved Unanimously.

THE DOMESTIC RELATIONS COMMITTEE

Kathy Sekardi, Administrative Office of the Courts (AOC) staff to the DRC, and Katy Proctor, AOC Legislative Staff, gave a presentation on the DRC and how it functions to achieve legislative changes to improve domestic relations laws.

Ms. Sekardi gave a brief history of the committee and explained its main objectives and reporting requirements. She explained the statutory requirements, such as member categories, appointing authorities, term lengths, and quorum requirements, as well as open meeting laws. She also discussed the advisory committees (workgroups) and the DRC's process of getting recommended legislation to the legislature. She explained the Arizona Code of Judicial Administration (ACJA), which *'compiles the policies and procedures that guide the courts and assists them in conducting their administrative function'*. Ms. Sekardi explained the role of AOC committee staff and informed members of the new committee website, which can be found at <http://www.azcourts.gov/cscommittees/DomesticRelationsCommittee.aspx>.

Ms. Proctor discussed the Arizona Judicial Council (AJC), and its role in assisting the *"Supreme Court and the Chief Justice in development and implementation of policies and procedures for the state's courts and to ensure the administration of justice,"* and discussed the AJC's legislative process. Ms. Proctor stated that the AJC drives the overall policy decision-making in the judicial branch. She explained AJC standing committees, the various subject areas they cover, and gave examples of how they work to identify issues that may require legislation. She described the basic responsibilities of the AOC's legislative staff and their role representing the AOC and the AJC at the legislature. Ms. Proctor noted their emphasis on the *administration of justice* side of issues, versus the *policy side*, which she characterized as the *implementation and logistical concerns*, versus the merit and necessity of the issue.

Ms. Proctor described how legislative staff presents pending legislative proposals to the respective standing committees for approval, and finally to the AJC, which advises legislative staff how to proceed at the legislature. When representing AJC at the legislature, legislative staff will lobby on proposals as directed, which might mean expressing support, opposition, or neutrality on a bill. It also could take the form of seeking agreement or compromise through discussion and the educating of legislators on the issues from the AJC's perspective. The final step of the AJC legislative process is implementation. Ms. Proctor further explained that because many of the bills have major impacts on the courts, legislative staff will gather direction from the standing committees as well as AJC to ensure a successful outcome.

In addition, Ms. Proctor described the way in which her role and Ms. Sekardi's role interact, where some of the proposals that come out of the DRC are then taken through the AJC process. She noted that it is often beneficial for proposals to receive the additional exposure to various committees and subject matter experts and it provides helpful input and perspectives. She added that this also gives legislative staff direction from AJC as to whether they should become involved in lobbying a proposal at the

legislature. Ms. Proctor offered to make this a part of the routine process with DRC proposals and commit her time to working with the committee in this capacity.

Russell Smolden asked Ms. Proctor how the AJC review process could be workable since DRC is a legislatively created committee. Ms. Proctor stated that the legislative group routinely takes both internal and external proposals through the AJC process, so this would not be an obstacle for the DRC.

LEGISLATIVE UPDATE

Ms. Proctor also provided highlights of some of the domestic relations legislation occurring during the recent session. Effective date, unless specified otherwise, is July 31, 2010.

SB 1094; MARRIAGE DISSOLUTION; DISPOSITION OF PROPERTY

Would establish provisions regarding the deliberate or willful concealment of property, assets, debt and obligations by directing the Court to sanction the concealing party in a post-decree proceeding filed by either party within 180 days after discovery of the property, debt or obligation for which no provision was made in the decree. Potential sanctioning options include, but are not limited to: an unequal division of the asset of allocation of debt, an award of attorney fees, expert fees and court costs, judgment in the nature of fraud or other monetary damages. Failed on the House floor.

SB 1095; ACCESS TO CHILD; NOTIFICATION

Requires a child's parent or custodian to immediately notify the other parent or custodian if the parent knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children may have access to the child. The parent or custodian must provide written notice to the other parent or custodian should they find out that a sex offender or person who has committed dangerous crimes against children has access to the child. Requires the educational program and proposed parenting plan to include a statement that each parent has read, understands and will abide by the notification requirements outlined above. Passed.

SB 1111; CHILD SUPPORT; MEDICAL INSURANCE

Narrows the cash medical support provisions to apply only to IV-D cases. The requirement to pay cash medical support terminates if the parent obtains private insurance, and if private insurance terminates, the cash medical support order automatically resumes on the first day of the following month. The requirement to obtain medical insurance or pay cash medical support is the responsibility of the noncustodial parent. Passed.

SB 1090; WELFARE ASSISTANCE; ASSIGNMENT OF RIGHTS

Retroactive to October 1, 2009, prohibits the state from obtaining an assignment of rights to support from persons applying for TANF cash assistance that accrued prior to receiving TANF benefits. Passed.

SB 1113; CHILD SUPPORT COMMITTEE; MEMBERSHIP

Allows a division or section chief from the Attorney General's Office to designate someone to sit in his or her place on the Child Support Committee. Passed.

SB 1114; MATERNITY; PATERNITY; GENETIC TESTING

Expands maternity and paternity testing procedures to all genetic testing, rather than specifically drawing blood or DNA testing. Requires that testing procedures be conducted by an accredited laboratory. Passed

SB 1115; CHILD SUPPORT; ORDER FOR ASSIGNMENT

Repeals §25-506: foreign support order, and makes conforming changes. Failed.

SB 1116; LIMITED INCOME WITHHOLDING ORDERS

Expands the definition of lump sum payments that may be subject to a limited income withholding order for arrearages owed by an obligor for child support, by adding excess proceeds, retroactive disability proceeds, and personal injury awards. Passed.

SB 1032; COMMUNITY PROPERTY; SEPARATE DEBTS

In order for a credit card to be considered part of a community property, both spouses must sign the credit card application. If an application is only signed by one spouse, then the credit card will be a separate debt and the obligation of that spouse. Failed.

HB 2207; CHILD BIGAMY; CHILD CUSTODY

Unless the court finds that there is no significant risk to the child and states its reasons in writing, the court shall not grant a person sole or joint physical or legal custody of a child or unsupervised parenting time with a child if the court finds sufficient evidence to believe that the person has engaged in the practice of child bigamy and will continue to engage in the practice of child bigamy in the future. Failed.

HB 2353; UNMARRIED COUPLES; RESPONSIBILITIES

Creates domestic partner registry, outlines rights, allows for fees. Failed.

HB 2459; CHILD DEVELOPMENT; SUPPORT; FATHERS' RESPONSIBILITIES

Prohibits the state registrar from issuing a birth certificate if the father's name is not listed on the certificate, unless the mother is unable to determine paternity. In that case, the certificate must indicate "paternity undetermined". Failed.

SB 1189; ADMISSIBILITY OF EXPERT OPINION TESTIMONY

In a civil or criminal action, expert testimony regarding scientific, technical or other specialized knowledge may only be offered by a qualified witness. In essence, legislatively applies *Daubert* to Arizona, however, the bill requires the judge to apply the above enumerated factors if applicable; Daubert provides discretion to the trial judge as to whether to apply the factors. Passed.

HB 2650/SB 1199; DIVORCE; WAITING PERIOD; EDUCATIONAL PROGRAMS

Would have allowed persons in conciliation court to extend their stay an additional 120 days. The petition for extension must include the basis for the extension, which may include a plan for reconciliation or a counseling schedule. Failed.

SB 1308; SCHOOLS; INSTRUCTION; DATING ABUSE

Permissively allows school districts (7-12th grade) to incorporate age-appropriate information about dating abuse into existing health curriculum. Passed.

SB 1309; PARENTS; RIGHTS

A parent's right to direct the upbringing, education, health care and mental state of a child is a fundamental right, and the state or any government entity is prohibited from infringing on these rights unless it demonstrates that the compelling governmental interest as applied to the child is of the highest order, is narrowly tailored and not otherwise served by a less restrictive means. Passed.

SB 1314; DOMESTIC RELATIONS

Contains a public policy statement declaring that in the state of Arizona, it is in a child's best interest to have substantial, frequent, continuing and meaningful parenting time with both parents and to have both parents engage in decision-making for the child, unless there is evidence to the contrary. Passed.

SB 1162; DOMESTIC RELATIONS COMMITTEE

Adds a "representative of a statewide coalition that combats sexual assault and assists victims of sexual assault who is appointed by the governor" to the DRC. Failed.

HB 2011; WELFARE; BUDGET RECONCILIATION; 2010-2011

In pertinent part, removes the cap of \$2.50 on the monthly fee paid by an obligor to the support payment clearinghouse and instead allows the Director of the Department of Economic Security to set the amount of the fee in rule. Exempts the Department from the rulemaking process for the purpose of establishing the fee. Provides that it is the intent of the Legislature that the additional revenue collected through the fee not exceed \$1,050,000. Passed. Effective date: 6/15/10.

Steve Wolfson asked about the change to SB1314, where the word *petition* was changed to *pleading*. He stated the change results in filings potentially being seen as inappropriate or not in good faith, so it is not as helpful as it would have been had the word change not been made. Ms. Proctor stated she was not involved in the discussion and is unaware of what transpired

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

Dr. Brian Yee, Chair of Court Procedures Workgroup, reminded members that the Substantive Law and Court Procedures workgroups have held joint meetings for the past couple of years due to the overlap of their topics. The two issues they are currently looking at are the relocation and Title 25 custody statutes

Ad-Hoc Custody Workgroup

Bill Fabricius, Chair, briefed the committee on the work of the Ad Hoc Custody Workgroup, noting their role in the language changes to the SB1314. He explained they continue the process of reviewing Title 25, chapter four, and described their four basic goals: 1) updating terminology and language to reflect current day custody terms; 2) organizing & cleaning up to reduce redundancy; 3) restructuring the sequence of sections so that the statute is easier to use, such as placing issues of child abuse and domestic violence before best interest items; 4) looking at substantive changes about the interests of children. The workgroup will report its work to the Substantive Law Workgroup. Mr. Fabricius announced there is now a webpage for the workgroup at <http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx> where the working documents can be found. He noted that members of the public are welcome to attend meetings.

Relocation Workgroup

Dr. Yee stated that the workgroup met prior to the DRC meeting this morning and proposals for modification to the relocation statute were discussed. It is a work in progress as they attempt to consolidate the different parts of the statute and make it coherent and user friendly in light of the number of pro se litigants that will be reading the statute. Mr. Wolfson added they are looking at A.R.S. § 25-408 as far as moving away from a mileage standard. The group will bring their proposal to the next meeting of the DRC.

PROPOSED CHILD SUPPORT GUIDELINES REPORT

David Horowitz, member of DRC and the Guidelines Review Committee (GRC), addressed the committee regarding the proposed child support guidelines. He provided some background on the quadrennial review process, which occurs in all states, and discussed the criteria as laid out in A.R.S. § 25-320(D), that must be considered in the review. Importantly, the criteria include ensuring the child retains the standard of living he or she would have enjoyed had the parents remained married. Mr. Horowitz pointed out that the current guidelines do not fulfill this requirement and this was one of several factors that led to the proposed change in the child support model.

Mr. Horowitz related the way in which the benchmarks of middle class living standard and minimally adequate income were developed with the help of expert consultants as well as with data obtained in an ASU survey of a pima county jury pool. He went on to describe how the *Child-Outcome Based Support* (COBS) model was created. He noted that economic consultants and experts were utilized in creating the grid and interpolation. Mr. Horowitz reviewed several data tables and explained the analyses, which are a result of a software program called *childshare*. He provided step by step examples of a disparate income situation, demonstrating how the current guidelines would result in the custodial parent living beneath the minimum adequate income level – or poverty line. He then used the COBS method to analyze the same income situation, which produced an outcome of an acceptable standard of living. Mr. Horowitz also addressed the 18 month phase-in period and stressed that every parent who wishes to do so will have the opportunity to go before a judge to request an extension and explain how their circumstances would justify an extension.

Committee Comments/Concerns:

- The current guidelines have an income cap. Will this be the case in the proposed guidelines?
 - *The proposed guidelines allow a \$20,000 income cap per parent, whereas the current guidelines allow a 'combined' income cap of \$20,000.*
- Are there instances in COBS where the custodial parent makes the higher income and the child support goes to the non-custodial parent?
 - *Yes. These are referred to as 'negative support payments'. This occurs particularly when there is a significant disparity in income coupled with significant amounts of parenting time for the person designated as the non-custodial parent.*
- Is there a time when the non-custodial parent is required to pay more than 51 percent?
 - *There is no provision under the proposed guidelines for this to occur.*
- Is there an automatic review process for parents whose support amount increases by 15 percent or more? Also, has there been an analysis to estimate the potential influx of cases when the new guidelines go into effect and the courts' ability to manage them?
 - *There has not been an analysis specifically looking at this issue. However, reviews of child support orders are not done automatically, regardless of the change in support amount. They are done strictly by request.*
- If the court adopts the proposed new guidelines, do the support amounts change automatically, or do individuals need to request a hearing before the court?
 - *There are no automatic reviews in child support cases, so individuals will need to request a hearing. Also, changes to the support amount are retroactive only to the date of service of the request to modify, not the hearing itself.*
- The proposed guidelines seem a bit like spousal support; did the GRC consider whether the new guidelines might deter the recipient from taking the initiative to improve their economic circumstances? Also, it appears the figures could work out so that a person could have a spousal support order in addition to the child support order.

- *The method for determining spousal support will not change under the proposed guidelines. Spousal support, if any, must always be determined prior to the child support order, thus the existence of a spousal maintenance order is a 'line item' included in the determination of income for the child support calculation.*
- Where can we find the mathematical data that supports the COBS theory? Also, the GRC doesn't account for certain inconsistencies. For example, if the income of the whole household is considered, the non-custodial parent should not need to be supplementing the lifestyle of the custodial parent who lives with a millionaire.
 - *The question of additional resources (income) in the household is an individual circumstance that allows for 'deviation' from the guidelines. These situations fall outside the parameters where the guidelines would produce a fair or just result. In deviating from the guidelines, the court may consider that additional income.*
- What is the expected date the guidelines will be passed?
 - *They will be presented before the AJC at its October 2011 meeting. If approved, they would likely go into effect in March 2011.*
- Is there a website where a person can comment on the guidelines?
 - Yes, submit your comments on the GRC webpage at:
<http://www.azcourts.gov/cscommittees/ChildSupportGuidelinesReviewCommittee.aspx>

Ms. Theresa Barrett, DRC member and AOC manager of the Court Programs Unit, commented that as a result of concerns voiced by numerous members of the public regarding the lack of independent evaluation of the proposed guidelines, the GRC is currently working with the National Center for State Courts (NCSC) to obtain an independent review. She went on to explain that the NCSC is an independent, nonprofit court improvement organization offering assessment by researchers and consultants to support the improvement in judicial administration in state courts. It is expected the review will be complete and available for discussion by the time of the next GRC public hearing, on September 10, 2010.

GOOD OF THE ORDER/CALL TO THE PUBLIC

Several members of the public were present to express their concerns regarding the proposed child support guidelines. Their main concerns are recapitulated here.

Ms. Karen Duckworth acknowledged the work done by the GRC and the need for improvement to the current child support guidelines. However, she noted the following problems with the proposed child support guidelines:

- Child support should not create disincentive (economic) for a parent to remarry, but this could be the case under COBS since it includes a new spouse's income in its calculations.
- A mother has a moral obligation to work and improve herself to rectify a disparate income situation, rather than burdening the noncustodial parent with 'closing the gap'.
- The *Income Shares Model* could be improved and even benefit by incorporating some of COBS features, but COBS is too radical to replace the current model.

Mr. Kevin Wasson expressed concerns that COBS will benefit parents rather than children:

- In cases of high income disparity, there is already ample case law for judges to follow.
- While there are areas of the current guidelines that could be improved, the COBS model is essentially alimony disguised as child support.
- COBS is an 'ALI' (American Law Institute) model that's been relabeled to make it more palatable. Over the past 10 years, the ALI model has been repeatedly rejected by most states.

Mr. Timothy Frank voiced concerns about the financial uncertainty for himself and others, that will be created by the COBS method. He provided materials to support his concerns, some of which are included here:

- The *Income Shares Model* allocates the marginal cost of parenting to each parent as a proportion of their incomes, while COBS seeks to equalize the standard of living of the parents.
- This represents a significant change in the state policy of child support, which has yet to be discussed or debated by elected officials and the directly affected citizens.
- The GRC and the Supreme Court lack the authority to impose such changes to state policy.
- Elected officials need to be brought in to consider this matter.

Mr. Brent Miller expressed his unhappiness with the seemingly covert manner in which the GRC conducted its work. He provided a letter detailing his concerns with COBS, which include some of the following items:

- COBS was developed in a 'cloak of secrecy' without public or legislative input, or legitimate 'vetting'.
- GRC documents and information are not readily accessible – the committee website is obscure and provides very little of the information related to the development of COBS.
- The GRC has refused to seek an independent review of the COBS model.
- GRC staff have not been forthcoming with answers to direct questions.

- There is a conflict of interest in that the COBS model is based on a child support theory developed by a voting member of the GRC.

Ms. Deborah Brimhall Pearson addressed the committee about the unfair impact of COBS on fathers. Some of the concerns she mentioned were as follows:

- The COBS model manipulates the statistics.
- The GRC has demonstrated prejudice against fathers.
- There should be a method of accounting for expenditures to ensure child support money is used for the needs of the child.
- The phase in period is not sufficient.

Mr. Terry Decker discussed his objections to the GRC's statistical approach and to the involvement of the supreme court in the child support guidelines.

- The GRC has not made clear the methodology used in acquiring COBS data and the data is inaccurate due to a flawed statistical approach.
- It is not within the Supreme Court's authority to implement a change in state policy such as COBS.
- The COBS model is combining spousal support with child support.

ADJOURN

The meeting was adjourned at 1:25.